IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 605 of 2000
in
SPECIAL CIVIL APPLICATION No 8830 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISH KAKWANI

Versus

GUJARAT INSTITUTE OF EDUCATIONAL TECHNOLOGY

Appearance:
GIRISH PATEL ASSOC for Appellant
Mr.V.M. Pancholi, AGP, for Respondent Nos. 1 and 2.
Respondent No.3-party-in-person.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/05/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE P.B.MAJMUDAR)

1. This Letters Patent Appeal is directed against the order of the learned single Judge dated 28th August, 2000 passed in Special Civil Application No.8830 of 2000, by which the learned single Judge has dismissed the said Special Civil Application summarily at the admission stage. The issue involved in the present litigation is regarding appointment to the post of Director, Gujarat Institute of Educational Technology (GIET).

2. The appellant-original petitioner moved this Court by the said Special Civil Application challenging the appointment of respondent No.3 herein to the aforesaid post of Director by way of Notification dated 20th July, 2000. It is the say of the appellant that he is holding the qualifications of M.Sc. as well as Diploma in Drama and is having experience of Production and Management in different media, like Audio and Video, which is one of the requirements for the post of Director. The appellant was appointed as Assistant Station Director, Doordarshan, Ahmedabad in 1994.

3. GIET is established by the State of Gujarat to assist the Department of Education in the implementation of its educational policies and major educational programmes through educational technology at all levels, and for that purpose, it undertakes to produce educational programmes for media, such as T.V., Radio, Audio-Video Cassette Player, films, etc. As per the rules, the qualification for the post of Director is prescribed in Rule 22. As per the same, GIET shall have a full-time Director, who shall be appointed by the State Government on deputation or on a contract basis. The relevant Rule is as under :-

> " ... ...
>
> 22. Director
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> a. The GIET shall have a full time Director who shall be appointed by the State Government on deputation or on a contract basis.
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> b. The Director shall be appointed on the recommendation of a selection committee consisting of :
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> 1. The Executive Committee's Chairman.

2. Officer of the State Government not below the rank of the Secretary to the Government.

3. A representative of the Government of India.

4-5 2 Experts to be nominated by the State Government of which one shall be media Expert and the other an educationalist.

6 Joint Director GIET.

c. The Director shall be appointed by the State Government for such term as may be appropriate, and the term may be extended from time to time at the discretion of the State Government.

d. Remuneration and other terms and condition will be determined by the appointed authority taking into account the recommendations if any, of the selection committee referred at (b) above.

... ..."

Accordingly, the Director can be appointed by the State Government on deputation or on a contract basis and such Director is to be appointed on the recommendation of a Selection Committee consisting of the Executive Committee's Chairman, Officer of the State Government not below the rank of the Secretary to the Government, a Representative of the Government of India, two Experts to be nominated by the State Government of which one shall be a media Expert and the other an Educationalist and Joint Director GIET.

4. It is the say of the appellant-original petitioner that he was appointed as Officer on Special Duty on deputation in the respondent No.1-Institution on 21.7.1998 and he was also entrusted with the duties of the Director of the respondent No.1-Institute. It is also the say of the appellant that considering his performance, his appointment was extended upto 22.7.2001 by order dated 21.9.1999. In order to appoint the Director, a letter dated 24.1.2000 was circulated,

inviting applications for appointment to the said post. The appellant also applied for the same with others, and one of them was respondent No.3 herein. The Committee appointed under Rule 22 interviewed the candidates and on the basis of their recommendations, they recommended the name of the present appellant at serial No.1 for appointment to the said post, and the name of the present respondent was at serial No.2. Since the State Government decided to appoint respondent No.3 herein, who was at serial No.2 in the merit list prepared by the Selection Committee, the appellant herein challenged the said action by filing the aforesaid Special Civil Application No.8830 of 2000. The said challenge was made on the ground that since the Expert Committee found him more suitable for the post, as he was placed at Serial No.1, it was not open for the State Government to bypass the recommendation of the Selection Committee lightly, as, normally, the rank in the merit list was required to be considered by the Government. Accordingly, the appointment of respondent No.3 herein was challenged by the appellant-original petitioner by filing the said Special Civil Application.

5. The learned single Judge, after considering the petition as well as the argument of the appellant, dismissed the said Special Civil Application summarily without issuing notice to the respondents. The learned single Judge came to the conclusion that respondent No.3 was appointed as Director of the institution on deputation basis and that the appellant was appointed on deputation initially in the Institution as Officer on Special Duty. It was found that as respondent No.3 is appointed to the post of Director of the Institution on deputation, none of the legal and fundamental rights of the appellant-original petitioner is infringed. The learned single Judge also further observed that the appellant has no right to the post as he is appointed merely on deputation on the post of Officer on Special Duty and he has no lien on any post in the Institution. The learned single Judge also found that it cannot be said that the order in question is a perverse one and that as a result of the selection, if the Government has decided not to make an appointment as a result of such selection, but to appoint respondent No.3 on deputation, it cannot be said that the said decision is perverse. The learned single Judge also found that the action cannot be said to be mala fide. Under these circumstances, the Special Civil Applicaiton was dismissed by the learned single Judge, which order is impugned in the present Letters Patent Appeal.

6. At the time of hearing of this appeal, it was argued by Mr.Patel, learned Advocate for the appellant, that when the Body of Experts has already found the appellant as more suitable for the post in question by putting his name at serial No.1, the State Government was normally expected to accept such recommendation unless very strong reasons are made out to depart or deviate from the same. Mr.Patel further argued that the appellant, who is working in the Institution on deputation on the post of Officer on Special Duty was, in fact, discharging duty as Director also as In-charge Director. He submitted that if there was anything wrong with his working, naturally, there was no question of issuing letter dated 3rd June, 1999, which is appearing at page 23. By the said letter, the Deputy Secretary to the Government of Gujarat, Education Department, addressed the Secretary, Ministry of Information and Broadcasting, Government of India, New Delhi that the services of Shri Harish Kakwani (the present appellant), Assistant Station Director, Doordarshan Kendra, were placed at the disposal of the Government of Gujarat vide Government of India, Office Order No.26-98-S-III dated 10.7.1998. Shri Kakwani was appointed as Officer on Special Duty, Gujarat Institute of Educational Technology (respondent No.1-Institution) vide Education Department's order of even number dated 21.7.1998. Shri Kakwani resumed office as Officer on Special Duty with effect from 23.7.1998 and his deputation is for one year. Since eight to ten months of his working, the Institute has progressed well in production as well as ETV programmes for children and audio visual for teachers on an evaluation, it is said, and he has been able to manage routine and different kinds of work of the Institute. Looking to his performance, the Government of Gujarat has decided to extend his services for a further period of two years. It was, therefore, requested to extend the deputation period of the appellant for two years from 22.7.1999.

Mr.Patel has placed heavy reliance on the said letter and it was contended by him that if his work was not satisfactory for the post which he was holding on deputation and ultimately when even the Expert Committee also found him more suitable and placed him at serial No.1 in the merit list, there was no cogent or reasonable ground available with the State Government to bypass the said recommendation of the Expert Committee and, therefore, appointment of respondent No.3, ignoring the claim of the appellant, was not just and was discriminatory. Mr.Patel has further submitted that it is always open for the State Government to deviate from

the recommendation of the Selection Committee as, ultimately, it is the State Government, which is the appointing authority, but for such deviation, strong materials should be placed before the Court, as, normally, it is expected that Experts are assigned the work of finding out and selecting the best candidate and the opinion of such Committee, normally, should not be taken casually or lightly.

7. As against the said argument, Mr.V.M. Pancholi, learned AGP, argued that the State Government has considered the recommendation of the Expert Committee and after considering the same, ultimately, the State Government came to the conclusion that respondent No.3 is more suitable for the post in question. Since the Special Civil Application was dismissed summarily without notice to the other side, the State Government has filed affidavit-in-reply in the present Letters Patent Appeal.

8. In the said affidavit-in-reply filed by the Under Secretary, Education Department, Gandhinagar, it is stated that the Selection Committee is a recommending body and on its recommendation, the appointing authority, i.e. the Government, has to consider all aspects before appointment of any candidate. It is further stated that the Government has considered the work of the appellant during the last more than one year and the recommendation of the previous Selection Committee which met on 21.11.1997 and therafter, decided not to appoint the appellant as Director. It is also stated that respondent No.3 herein has worked as full-time Director of the State Institute of Educational Technology, Patna, Bihar and looking to his bio-data and experience, he was found suitable for appointment as Director and, therefore, the Government decided to appoint him as Director on deputation basis for one year. It is stated that the Selection Committee is merely a recommending authority and the Government is the appointing authority and, therefore, before making appointment, the appointing authority has to consider various aspects and ultimately, respondent No.3, who was found more suitable for the post in question, was appointed by way of deputation for the post in question.

The appellant herein also filed further affidavit-in-rejoinder, wherein it is stated that he is having vast experience and qualification and during the short period when he was in charge, the Institute became very active and dynamic and, therefore, ultimately, it was recommended to extend his deputation. He further stated that the entire bio-data as well as the nature of

the work performed by the appellant and respondent No.3 was available with the Selection Committee and after evaluating the competing merits, the Selection Committee prepared the said select list. He submitted that so far as the reference regarding decision of the previous Selection Committee which met in the year 1997 is concerned, it is irrelevant as the said selection process was undertaken three years back and no one was selected by the Select Committee at that time. He further submitted that what was relevant was to consider the performance of the candidate subsequent to the said period and, therefore, the Government has taken into consideration irrelevant aspects for bypassing the claim of the appellant. He also further submitted that, it is no doubt, true that respondent No.3, Mr.Zaveri, was appointed as full-time Director at Patna, but he has not mentioned that, subsequently, he has resigned. Respondent No.3 submitted before us while arguing the matter as a party-in-person that, no doubt, on some technical ground, his appointment was challenged, but since his wife was not keeping well, he decided to resign from the said post before even the said Special Civil Application was finally adjudicated by the Court. According to him, therefore, the said question that he had resigned from the post of Director in Bihar is not relevant. Since the appellant has stated in his affidavit-in-rejoinder that during the Directorship of respondent No.3, the Institution has gone back to its original moribund state, respondent No.3 has stated in his affidavit-in-reply that during the tenure of the present appellant as O.S.D., the appellant has created lot of confusion and unhappiness amongst the staff and the staff was totally demoralised and frustrated due to many decisions taken by him by way of misleading and misguiding the members of the Executive Committee and the Governing Body. Of course, in our view, this type of allegations and counter allegations are not required to be considered in the present Letters Patent Appeal.

9. In order to find out the material on which ultimately the Government took the decision to appoint respondent No.3, we requested the learned AGP to produce the original file before the Court and he has accordingly placed the relevant file of the present case before us.

As per the noting in the file, the Education Minister found that the Selection Committee unanimously decided that the present appellant may be placed at serial No.1 and that the respondent No.3 at serial No.2 and that, therefore, the Committee has recommended to appoint the appellant by way of deputation on the said

post, but, since the earlier Selection Committee did not find the appellant fit for appointment to the said post and in addition to that, when he was holding additional charge of Director his work was not found satisfactory, it would not be proper to appoint him on the said post. As against that, respondent No.3 had worked as full-time Director in State Institute of Educational Technology, Bihar, Patna from 21.8.1997 to 21.9.1998. The post which he was holding was equivalent to the post of Director of GIET. That his bio-data is also very good. Considering the same, the Education Minister recommended that he should be appointed at the first instance for one year and during that period, if his work is found to be satisfactory, decision can be taken to extend the same. On the aforesaid noting of the Education Minister, the Chief Minister also put his endorsement below the same and as per the said noting, it is stated that since the earlier Selection Committee did not find the appellant as fit, as per the recommendation of the Education Minister, case of respondent No.3 may be taken into consideration and further discussion can be held on the subject. Subsequently, it is the noting of the Chief Minister, appearing at column A, that as per the recommendation of the Education Minister, as the appellant was not found fit by the earlier Selection Committee for appointment to the post of Director, respondent No.3 may be appointed. On the aforesaid basis, ultimately, the Government decided to appoint respondent No.3 to the said post for a period of one year on deputation.

10. Respondent No.3, Mr.Jhaveri, who appeared as a party-in-person before us, very vehemently submitted that he is having a very wide experience in the subject in question. He is having varied experience, he has acted in drama and he is deeply associated with the activities regarding educational technology, etc. He, therefore, submitted that since the performance of the appellant when he was in charge as Director was not satisfactory, and looking to the past experience and merits of respondent No.3, if he has been selected by the Government, the said selection should not be set aside by this Court.

11. The principal question which we are required to consider, therefore, is whether the departure made by the State Government by not accepting the recommendation of the Selection Committee is just and proper and is based on relevant consideration.

12. Mr.Patel also submitted that the fact about the non-selection of the appellant three years back is

absolutely an irrelevant fact, and the said fact is considered by the Government just to deny the benefit of the appointment to the post in question. Considering the facts and circumstances of the case as well as considering the notings of the concerned Education Minister as well as of the Honourable Chief Minister, we are of the opinion that the ground on which the Government decided to deviate from the recommendation of the Selection Committee is the non-selection of the present appellant in the year 1997. As stated by Mr.Patel, during that selection, nobody was appointed. Now, thereafter, in this new selection process, the Expert Committee constituted by the Government considered relevant materials, which were before the Committee for finding out the best candidate for the post in question. In our view, therefore, deviation from the Selection Committee's recommendation, solely on the basis of non-selection of the appellant in the year 1997, does not appear to be proper and the alleged ground for non-selection cannot be said to be a relevant criterion which was required to be considered.

It is required to be noted that, it is undoubtedly true that the State Government, being the appointing authority, is not bound by the recommendation of the Expert Committee's recommendation. Nonetheless, when such Expert People, who are more experienced in the subject in question, have ultimately found the appellant to be more suitable by placing him at serial No.1 in the rank list, such recommendation normally is not required to be deviated unless there are very cogent material available for such deviation. Considering the noting of the Education Minister and the Honourable Chief Minister, we are of the opinion that the aforesaid ground, based on which the Selection Committee's recommendation is bypassed, cannot be said to be a rational or reasonable ground for such deviation. It was open for the State Government to take other facts into consideration, like relative merits, demerits or antecedents of a candidate. As a matter of fact, the State Government itself recommended extension of deputation period of the present appellant in the past, wherein it is specifically stated that during his tenure, the Institution has progressed well. We have already referred to the said letter in the earlier part of our order. It is not for us to find out or state whether the appellant was more suitable or respondent No.3, looking to his qualification, was not suitable for the post in question. The said question is in the realm of the appointing authority. However, looking to the material which is placed before us, we are not satisfied that the deviation from the recommendation

of the Selection Committee by the State Government was justified in the facts of the case.

13. Mr.Patel has relied on the decision of the Apex Court in Jatinder Kumar and others v. State of Punjab and others, (1985) 1 SCC 122, wherein the Apex Court had an occasion to consider a case of recommendations of Service Selection Board / PSC. While holding that the said recommendations are directory, it is stated that the persons selected and recommended by the Board or Commission for appointment to a post have no right to be appointed. The Government may accept the recommendations or may decline to accept the same, but if it chooses not to accept the recommendations, the Government is made answerable to the Legislature under Article 323 of the Constitution, and if the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. In that context, the Honourable Supreme Court held as under in paragraph 12 of the said decision :-

> " ... ...
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> The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability, varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission. The selection has to be made by the Commissioner and the Government has to fill up the posts by appointing those selected and recommended by the Commissioner adhering to the order of merit in the list of candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the

> same. But if it chooses not to accept the recommendations of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons, viz., bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made.
> ... ..."

It is required to be noted that even the noting from the file does not reflect that the appellant's work as In-charge Director was in any way not satisfactory. There is nothing on record to show that he was even subjected to any communication in this behalf about his non-satisfactory performance. On the contrary, the material on record is otherwise, to which we have referred earlier, and it was recommended to extend his deputation. Therefore, the sole ground which was mainly considered by the Government was non-selection of the appellant in 1997 by the earlier Selection Committee, which, in our opinion, cannot be said to be a relevant material which would have been taken into consideration. In any case, before the Selection Committee, entire material was on record and on the basis of the material, the select list was prepared. Under these circumstances, it seems that absolutely on irrelevant and irrational consideration, the claim of the present appellant was bypassed by the State Government.

It is required to be noted that the post in question is required to be filled in by deputation or contract only. Therefore, it cannot be said that since the appointment of respondent No.3 is only by way of

deputation, no legal right of the appellant can be said to be infringed. Even though appointment was to be made on deputation, selection procedure is prescribed and Selection Committee was constituted for selecting the best candidate.

It is also required to be noted that as per the affidavit-in-reply, it is the say of the State Government that the performance of the appellant while he was serving on deputation on the post of Officer on Special Duty, as well as In-Charge Director was also taken into consideration. However, it is required to be noted that no such comparative data of the respondent No.3 was available as he was not serving in the institution, like the present appellant, and, therefore, simply because the appellant has served in the institution on the lower post of Officer on Special Duty, when the question of appointment of Director on regular or deputation basis arose, the said fact ought not to have been taken into consideration and, in any case, since such comparative data regarding respondent No.3 was not available as he was not working as an Officer in the Institution, like the appellant, that fact should not have been taken into consideration for the non-appointment of the appellant, especially when even otherwise, the Government itself recommended the case of the appellant for further extension as per letter appearing at page 23.

14. At this stage, a reference is required to be made to a decision dated 4.4.2001, which we have rendered in Special Civil Application No.754 of 2000. After considering the facts and circumstances of the case, and the case law cited before us, it was observed as under in paragraph 18 :-

> " ... ...
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> 18. As has been held by us above, the candidate recommended by the Selection Committee and included in the select list cannot, as of right, claim any appointment. But, he can certainly claim due consideration for appointment on the basis of his inclusion in the select list. He can also make a grievance against unfair and unreasonable stand or action of the appointing Authority in not giving effect to the select list. Not a right of appointment, but a right of being considered for appointment on the basis of

select list, fairly and reasonably, is the right which flows from Articles 14 and 16 of the Constitution of India. We rely on the following observations of the Supreme Court in the case of R.S. Mittal (supra) :

> " It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr.Murgod within a reasonable time of availability of the vacancy and therafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

15. In view of what is stated above, we are of the opinion that the material on record did not justify the departure on the part of the State Government from the recommendation of the Selection Committee which consisted of Experts on the subject. If there was any other material with the Government, it may be a different thing altogether, but, surely, the ground on which the decision to deviate from the recommendations is taken cannot justify the stand of the Government. Under the aforesaid

circumstances, therefore, we allow this Appeal by setting aside the Notification dated 20.7.2000 passed by the respondent-State, appointing respondent No.3 as Director of respondent No.1. The State Government is directed to reconsider the question of appointment of the Director in the institution taking into account the recommendations of the Selection Committee and on the basis of the same, ultimately, fresh orders may be passed regarding appointment on the post of Director of the respondent No.1-Institution. Such decision may be taken within a period of eight weeks from today.

16. Appeal is accordingly allowed. The order of the learned single Judge dated 28.8.2000 passed in Special Civil Application No.8830 of 2000 is set aside. There shall be no order as to costs.

May 04, 2001 (D.M. Dharmadhikari, C.J.)

(P.B. Majmudar, J.)

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(apj)